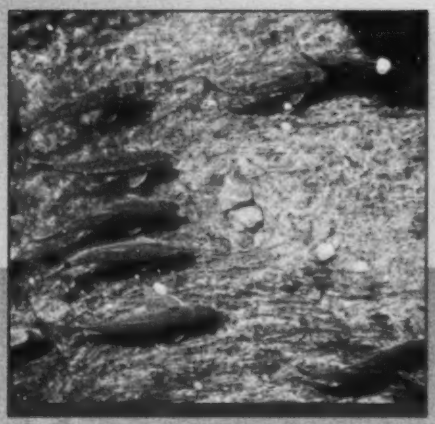
Fisheries and Oceans Canada | Pêches et Océans Canada



ANNUAL REPORT TO PARLIAMENT

on the Administration and Enforcement of the Fish Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*

April 1, 2010
To March 31, 2011

Canada

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Minister of
Fisheries and Oceans

Ministre des
Pêches et des Océans

Ottawa, Canada K1A 0E6

Ms. Audrey O'Brien
Clerk of the House of Commons
Room 228-N, Centre Block
House of Commons
Ottawa, Ontario
KIA OA6

Dear Ms. O'Brien:

In accordance with the provisions of section 42.1 of the *Fisheries Act*, I have the honour to present, in both official languages, two copies of the Annual Report on the Administration and Enforcement of the Fish Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act* for the fiscal year 2010-2011.

In conformity with the requirements of the Act, these copies are for tabling in the House of Commons.

Sincerely,

Keith Ashfield, P.C., M.P.

Attachments

Minister of
Fisheries and Oceans

Ministre des
Pêches et des Océans

Ottawa, Canada K1A 0E6

Mr. Gary O'Brien
Clerk of the Senate & Clerk of the Parliaments
Room 183-S, Centre Block
The Senate
Ottawa, Ontario
K1A 0A4

Dear Mr. O'Brien:

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Sincerely,

Keith Ashfield, P.C., M.P.

Attachments

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Abstract

Fisheries and Oceans Canada. 2011. Annual Report to Parliament on the Administration and Enforcement of the Fish Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*. April 1, 2010 to March 31, 2011: iv + 40 p.

This is a report on the administration of Fisheries and Oceans Canada's National Habitat Management Program and Environment Canada's Pollution Prevention Program during the 2010-2011 fiscal year. It highlights the two departments' activities.

Résumé

Pêches et Océans Canada. 2011. Rapport annuel au Parlement sur l'administration et l'application de dispositions de la *Loi sur les pêches* relatives à la protection de l'habitat du poisson et à la prévention de la pollution du 1er avril 2010 au 31 mars 2011 : iv + 40 p.

Ce rapport porte sur l'administration du Programme national de gestion de l'habitat de Pêches et Océans Canada et du Programme de prévention de la pollution d'Environnement Canada au cours de l'exercice financier 2010-2011. Il présente les activités entreprises par les deux ministères.

List of Acronyms

AENV	Alberta Environment
C&P	Conservation & Protection Program
CCME	Canadian Council of Ministers of the Environment
CEPA	*Canadian Environmental Protection Act*
CEAA	*Canadian Environmental Assessment Act*
CESD	Commissioner for Environment and Sustainable Development
CFIA	Canadian Food Inspection Agency
CNR	Canadian National Railway
CSAS	The Canadian Science Advisory Secretariat
CSSP	Canadian Shellfish Sanitation Program
DFO	Fisheries and Oceans Canada
DONCE	discharge out of the normal course of events
EA	Environmental Assessment
EC	Environment Canada
EDF	Environmental Damages Fund
EEM	Environmental effects monitoring
EEP	Environmental Emergencies Program
EPAM	Environmental Protection Alternative Measures
EPMP	Environmental Process Modernization Plan
FCSAP	Federal Contaminated Sites Action Plan
GIS	Geographic Information System
HADD	Harmful alteration, disruption or destruction
HaPAE	Healthy and Productive Aquatic Ecosystems
HMP	Habitat Management Program
MMER	*Metal Mining Effluent Regulations*
MOU	Memorandum of Understanding
NPA	National Programme of Action for the Protection of the Marine Environment from Land-based Activities
OGLA	Ontario-Great Lakes Area
PATH	Program Activity Tracking system for Habitat Management
PPER	*Pulp and Paper Effluent Regulations*
PPP	*Fisheries Act* Pollution Prevention Provisions
RISS	Regulatory Information Submission System
RMF	Risk Management Framework
SARA	*Species at Risk Act*
WSER	*Wastewater System Effluent Regulations*
WWTP	wastewater treatment plant

1.0 Executive Summary

Canada's freshwater and marine fish species and fish habitat play a critical role in Canada's economic prosperity and biological diversity. This Annual Report to Parliament summarizes the administration and enforcement of the fish habitat protection and pollution prevention provisions of the *Fisheries Act*[1], from April 1, 2010 to March 31, 2011.

The annual report highlights the activities of Fisheries and Oceans Canada's (DFO) National Habitat Management Program (HMP), Ecosystems and Oceans Science Sector, Conservation and Protection Program (C&P), as well as Environment Canada's (EC) Environmental Enforcement Branch and related Programs.

The *Fisheries Act* contains two key provisions that are applied for the conservation and protection of fish habitat that is essential to sustaining freshwater and marine fish species:

- DFO administers section 35, the key habitat protection provision, prohibiting any work or undertaking that would cause the harmful alteration, disruption or destruction (HADD) of fish habitat, unless authorized by the Minister of Fisheries and Oceans or through regulations under the *Fisheries Act*; and
- EC assumes the lead responsibility for the administration of subsection 36(3), the key pollution prevention provision, prohibiting the deposit of deleterious substances into waters frequented by fish, unless authorized by regulations under the *Fisheries Act* or other federal legislation.

1.1 Administration and Enforcement of the Fish Habitat Protection Provisions of the *Fisheries Act*

1.1.1 Review of Development Proposals (Referrals)

HMP activities contribute to ensuring that healthy and productive fish habitat is available to sustain the production of fish species and populations that Canadians value.

HMP staff review development proposals (referrals) to assess if a HADD of fish habitat is likely to result from a proponent's proposed works or undertakings. Staff send advice to the proponent on how to proceed with their works or undertakings in a manner that will comply with the *Fisheries Act*, mainly with respect to avoiding the HADD of fish habitat as prohibited under section 35. Advice is commonly provided in the form of a "Letter of

[1] The full text of the *Fisheries Act* can be found at: < http://laws-lois.justice.gc.ca/eng/acts/F-14/ >

Advice" or an "Operational Statement"[2] for low risk activities. An "Authorization" pursuant to subsection 35(2) of the *Fisheries Act* may be issued when HADD cannot be avoided.

During fiscal year 2010-2011 the HMP:

- Reviewed 7,722 development proposals (referrals) from across Canada to ensure compliance with the *Fisheries Act*, mainly with respect to avoiding the HADD of fish habitat;
- Provided advice to proponents or others on 4,405 occasions; and
- Issued 369 authorizations under subsection 35(2) of the *Fisheries Act*.

1.1.2 Compliance and Enforcement

DFO's Conservation and Protection Program is responsible for monitoring compliance with legislation and regulations regarding the conservation of fisheries resources and fish habitat. The Minister of Fisheries and Oceans appoints Fishery Officers to enforce fisheries regulations and fisheries management plans as well as the habitat provisions of the *Fisheries Act*.

DFO's measures to promote compliance include communication and public education; consultation with parties affected by the habitat protection provisions of the *Fisheries Act*; and technical assistance as required.

Enforcement of the habitat protection provisions is carried-out pursuant to the Compliance and Enforcement Policy for the Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*. Enforcement actions include inspections to monitor or verify compliance; investigations of alleged violations; the issuance of warnings, Inspector's Directions and Ministerial Orders. Court actions such prosecutions, court orders upon conviction and suits for recovery of costs can also be pursued where appropriate.

During fiscal year 2010-2011, DFO:

- Issued 75 warnings under the habitat protection provisions of the *Fisheries Act*;
- Laid 4 charges under the habitat protection provisions of the *Fisheries Act*;
- Proceeded with 5 alternative measures to prosecution; and,
- Successfully completed 10 convictions under the habitat protection provisions of the *Fisheries Act*.

[2] A list of DFO operational statements can be found at : < http://www.dfo-mpo.gc.ca/habitat/habitat-eng.htm >

1.2 Administration and Enforcement of the Pollution Prevention Provisions of the *Fisheries Act*

EC assumes the lead responsibility for the administration of the pollution prevention provisions of the *Fisheries Act* - namely subsection 36(3) and the related provisions of the Act. EC develops sector-based strategies and undertakes activities to promote and secure compliance with the pollution prevention provisions of the *Fisheries Act.*

EC works to:

- Advance pollution prevention technologies;
- Promote the development of preventative solutions; and
- Address issues relating to the pollution provisions of the *Fisheries Act, in cooperation with* provinces, territories, industry, other government departments and the public.

During fiscal year 2010-2011, EC carried out enforcement activities and measures under the *Fisheries Act*, including:

- Total of 3,693 compliance verification inspections;
- 45 investigations, involving gathering and analyzing evidence and information relevant to suspected violations; and
- Enforcement measures: 2 prosecutions, 3 charges, 0 convictions, 50 written directives and 88 written warnings.

2.0 The Policy and Legislative Setting

2.1 Purpose of Annual Report

Section 42.1 of the *Fisheries Act* requires the Minister of Fisheries and Oceans to table an annual report to Parliament on the administration and enforcement of the fish habitat protection and pollution prevention provisions.

The Annual Report is organized under the following four parts:

- Part 1.0 presents the executive summary.
- Part 2.0 provides the legislative and policy context for the conservation and protection of fish habitat, as well as an overview of DFO's HMP.
- Part 3.0 reports on DFO activities in 2010-2011 for the administration and enforcement of the fish habitat protection provisions of the *Fisheries Act*. This part covers both the review of development proposals (referrals) by the HMP, and the support provided by the Ecosystem Science and C&P programs.
- Part 4.0 reports on the work of EC in developing regulations, policies and guidelines related to the pollution prevention provisions of the *Fisheries Act*.

2.2 Legislative Basis for the Conservation and Protection of Fish Habitat

The Government of Canada fulfills its constitutional responsibilities for sea coast and inland fisheries through the administration and enforcement of the *Fisheries Act*. This Act provides DFO with powers and authorities to conserve and protect fish habitat[3], which is essential to sustaining freshwater and marine fish species and populations that Canadians value.

Section 35 is the key habitat protection provision of the *Fisheries Act*. This section prohibits any work or undertaking that would cause the harmful alteration, disruption or destruction (HADD) of fish habitat, unless authorized by the Minister of Fisheries and Oceans or through regulations under the *Fisheries Act*.

DFO administers and enforces section 35 and other related habitat protection provisions of the *Fisheries Act*, including sections 20, 21, 22, 26, 28, 30, and 32. The full text of these

[3] Fish habitat is defined under subsection 34(1) of the *Fisheries Act* as "spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out their life processes".

provisions is available on the Justice Canada Internet site[4]. A brief Summary of these sections is provided in Table 1 (see page 7).

Subsection 36(3) is the key pollution prevention provision. It prohibits the deposit of deleterious substances into waters frequented by fish, unless authorized by regulation under the *Fisheries Act* or other federal legislation. Regulations to authorize deposits of certain deleterious substances have been established for key industry sectors pursuant to subsection 36(5) (e.g., pulp and paper, and metal mining). EC is responsible for the administration and enforcement of the pollution prevention provisions of the *Fisheries Act*.

The *Fisheries Act* also contains provisions that support the administration and enforcement of the habitat protection and pollution prevention provisions. These include:

- Powers for the Minister to request plans and specification for works and undertakings that might affect fish or fish habitat (section 37);
- Authority for the Minister to appoint inspectors and analysts (subsection 38(1));
- Description of inspectors' powers (including entry, search, and direction of preventive, corrective or cleanup measures) (subsections 38(3) and 38(6));
- Description of offences and punishment (section 40); and
- Determination of liability when a deleterious substance has been deposited (section 42).

[4] *Fisheries Act* document is available at http://laws-lois.justice.gc.ca/eng/acts/F-14/index.html

Table 1:
Summary of the Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*

Section	Intent
20	The Minister may require fish-ways to be constructed.
21	The Minister may authorize payment, order construction or removal or require fish stops or diverters for fish-ways.
22	The Minister may require sufficient flow of water for the safety of fish and flooding of spawning grounds as well as free passage of fish during construction.
26	Prohibits obstruction of fish passage through channels, rivers and streams. In addition, the Minister may authorize devices to prevent the escape of fish.
27	Prohibits the damage or obstruction of fish-ways, the impediment of fish to fish-ways and nearby fishing.
28	Prohibits the use of explosives to hunt or kill fish.
30	The Minister may require fish guards or screens to prevent the entrainment of fish at any water diversion or intake.
32	Prohibits the destruction of fish by any means other than fishing.
34	Definitions used throughout sections 35 to 42.
35	Prohibits works or undertakings that may result in harmful alteration, disruption or destruction of fish habitat, unless authorized by the Minister or under regulations.
36	Prohibits the deposit of deleterious substances into waters frequented by fish, unless authorized under regulations.
37	The Minister may request plans and specifications for works or undertakings that might affect fish or fish habitat. The Minister may, by regulations or with Governor-in-Council approval, make orders to restrict or close works or undertakings that may harmfully alter fish habitat or lead to the deposit of deleterious substances.
38	Gives the Minister the authority to appoint inspectors and analysts and describes inspectors' powers, including entry, search and the power to direct preventive, corrective or cleanup measures. Provides for regulations that require reporting of abnormal deposits of a deleterious substance or substances that occur in contravention of the general prohibition, regulations or site-specific authorizations.
40	Sets out penalties in case of a contravention of: sections 35 or 36; failing to provide information or to undertake a project in compliance with section 37; or failing to make a report or to otherwise comply with section 38.
42	Those causing the deposit of deleterious substances in waters frequented by fish are liable for costs incurred by Her Majesty. Also, the Minister shall prepare an annual report on administration and enforcement of the fish habitat protection and pollution prevention provisions of the *Fisheries Act* as well as a statistical summary of convictions under section 42.1.
43	The Governor in Council may make regulations for carrying out the purposes and provisions of the *Fisheries Act*, including habitat protection and pollution prevention.

2.3 Policy for the Management of Fish Habitat

The *Policy for the Management of Fish Habitat*[5] (the Policy), and its supporting operational policies provide a comprehensive framework for the administration and implementation of the habitat protection and pollution prevention provisions of the *Fisheries Act* consistent with the goal of sustainable development.

The Policy has an overall objective to "increase the natural productive capacity of habitat for the nation's fisheries resources". This is to be achieved through the Policy's three goals of conservation, restoration, and development of fish habitat.

The Policy recognizes that habitat objectives must be linked and integrated with fish production objectives and with other sectors of the economy that make legitimate demands on water resources. As a result, the Policy identifies the need for integrated planning for habitat management as an approach to ensuring the conservation and protection of fish habitat that sustain fish production while providing for other uses.

A key element of the Policy is the guiding principle of "no net loss of the productive capacity of fish habitat". This principle supports the Policy's conservation goal. Prior to issuing an authorization under subsection 35(2) of the *Fisheries Act*, DFO applies the "no net loss" guiding principle, so that unavoidable habitat losses as a result of development projects are balanced by newly created and/or restored fish habitat.

If unacceptable losses of fish habitat cannot be prevented, the Policy calls for an authorization not to be issued. Furthermore, where deleterious substances result in harm to fish or damage to fish habitat, compensation[6] is not an option.

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[5] The full text of the *Policy for the Managment of Fish Habitat* can be found at:
< http://www.dfo-mpo.gc.ca/habitat/role/141/1415/14155/fhm-policy/index-eng.asp >.

[6] See Glossary in the *Policy for the Management of Fish Habitat* for the definition of compensation at:
< http://www.dfo-mpo.gc.ca/habitat/role/141/1415/14155/fhm-policy/page08-eng.asp >.

2.4 National Habitat Management Program

The HMP has responsibilities pursuant to the *Fisheries Act*, the *Species at Risk Act*, the *Canadian Environmental Assessment Act* and northern environmental assessment regimes. Consequently, the HMP is a major federal regulator affecting many development projects occurring in or around fresh and marine fish-bearing waters across Canada.

HMP activities contribute to its mandate to conserve and protect fish habitat that sustain fisheries resources that Canadians value. The program helps Canadians manage the impacts of non-fishery activities on fish habitat in the context of government-wide initiatives for sustainable development. The program uses scientific knowledge and understanding to develop regulations and policies; provides formal advice and direction; engages with individuals, organizations, and other levels of government; and manages compliance with the fish habitat protection provisions of the *Fisheries Act*.

HMP staff located in National Headquarters are responsible for the overall coordination of the delivery of the HMP, providing national policy direction, strategic advice and liaison with other DFO sectors, federal departments and national industry and non-governmental organizations (NGOs). Day-to-day delivery of the program is carried out by habitat staff located in 63 DFO offices across the country.

3.0 Administration and Enforcement of the Fish Habitat Protection Provisions of the *Fisheries Act*

3.1 Benefit for Canadians: Healthy and Productive Aquatic Ecosystems

HMP activities are aligned with DFO's strategic outcome identified as *healthy and productive aquatic ecosystems*. This outcome involves the sustainable development and integrated management of resources in or around Canada's aquatic environment through oceans and fish habitat management. Specifically, HMP activities support the development and use of aquatic resources for the benefit of all Canadians through ensuring the availability of healthy and productive fish habitat. Conserving and protecting fish and fish habitat requires the cooperation of Provinces, territories, industry, Aboriginal groups, individual Canadians and other stakeholders.

For more information on the impact of the Habitat Management Program Activity, as it contributes to progress towards the achievement of *healthy and productive aquatic ecosystems*, please refer to the annual Departmental Performance Report for Fisheries and Oceans Canada.[7]

3.2 Administration of the Fish Habitat Protection Provisions of the *Fisheries Act*

3.2.1 Overview

The administration of the Fish Habitat Protection Provisions of the *Fisheries Act* is the responsibility of DFO's HMP. The program accomplishes this in part by reviewing development proposals (known as "referrals"). Proponents may voluntarily submit information about their proposed works or undertakings to determine if they comply with the habitat protection provisions of the *Fisheries Act*. The referral process enables HMP staff to review submitted proposals to assess if a HADD of fish habitat is likely to result from the proposed works or undertakings. As part of its practice, the HMP applies a Risk Management Framework consisting of three components: Aquatic Effects Assessment; Risk Assessment, and; Risk Management.[8]

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[7] The report is available at: < http://www.dfo-mpo.gc.ca/reports-rapports-eng.htm >

[8] Information on DFO's application of the RMF is available at: < http://www.dfo-mpo.gc.ca/habitat/what-quoi/2-eng.htm >

As part of the referral process, Program staff send advice to a development proponent indicating the requirements for the conservation and protection of fish habitat. This advice informs proponents on how to proceed with their works or undertaking in a manner that will comply with the *Fisheries Act*, mainly with respect to avoiding the HADD of fish habitat (section 35). Advice is commonly provided in the form of a "Letter of Advice" or an "Operational Statement" for low risk activities. An "Authorization" pursuant to subsection 35(2) of the Act may be issued where HADD cannot be avoided.

Prior to issuing certain Authorizations pursuant to the *Fisheries Act*, HMP staff must verify whether the project under review has potential to adversely affect aquatic species listed under SARA, or their critical habitat, and ensure that an environmental assessment (EA) under CEAA (or other EA regimes) is completed.

DFO may exercise decision-making authority that triggers the CEAA under the following circumstances: where DFO is the project proponent; provides financial assistance; sells, leases, or otherwise transfers control or administration of federal land; or, makes certain regulatory decisions to enable a project to be carried out. In such cases, DFO becomes a "responsible authority" under the CEAA and must ensure that an EA is prepared prior to making a decision. Typically, an EA considers broad environmental issues linked to the project, as well as including those directly associated with fish and fish habitat. For more information regarding the nature of EAs under CEAA, please refer to the Website for the Canadian Environmental Assessment Agency.[9]

3.2.2 Review of Development Proposals (Referrals)

This section presents data recorded in the Program Activity Tracking System for Habitat (PATH) on review of referrals.

Table 2 presents summary data on the number of habitat referrals in 2010-2011 by work category for each DFO region.

Figure 1 illustrates the pattern in total habitat referrals, by region, from fiscal years 2006-2007 to 2010-2011.

Figure 2 illustrates the regional distribution of total habitat referrals for 2010-2011.

[9] Canadian Environmental Assessment Agency < http://www.ceaa-acee.gc.ca/050/index_e.cfm >

Table 2:
Summary of Habitat Referrals by Work Category
Fiscal Year 2010-2011

Region	Aquaculture	Contaminated Site Remediation	Control of Nuisance Species	Dredging	Fish Offal Disposal	Habitat Improvement	Instream Works	Log Handling	Mineral, Aggregate & Oil & Gas Extraction	Shoreline works	Structures in Water	Water Mgmt	Watercourse Crossing	Other*	Total
Central & Arctic	1	18	6	114	0	23	277	0	131	553	370	210	1,153	255	3,111
Gulf	37	3	0	68	0	32	30	0	3	42	51	30	186	43	525
Maritimes	15	4	0	32	0	15	16	0	3	119	102	63	367	95	831
Newfoundland	14	8	0	34	0	2	35	0	72	118	146	43	227	174	873
Pacific	3	11	6	62	0	43	278	40	161	424	262	197	294	259	2,040
Quebec	8	7	1	33	2	10	36	0	6	65	54	24	93	3	342
TOTAL	**78**	**51**	**13**	**343**	**2**	**125**	**672**	**40**	**376**	**1,321**	**985**	**567**	**2,320**	**829**	**7,722**

** Other includes those referrals where work category is to be determined*

Figure 1: Referrals Received by Region, 2006-2007 to 2010-2011

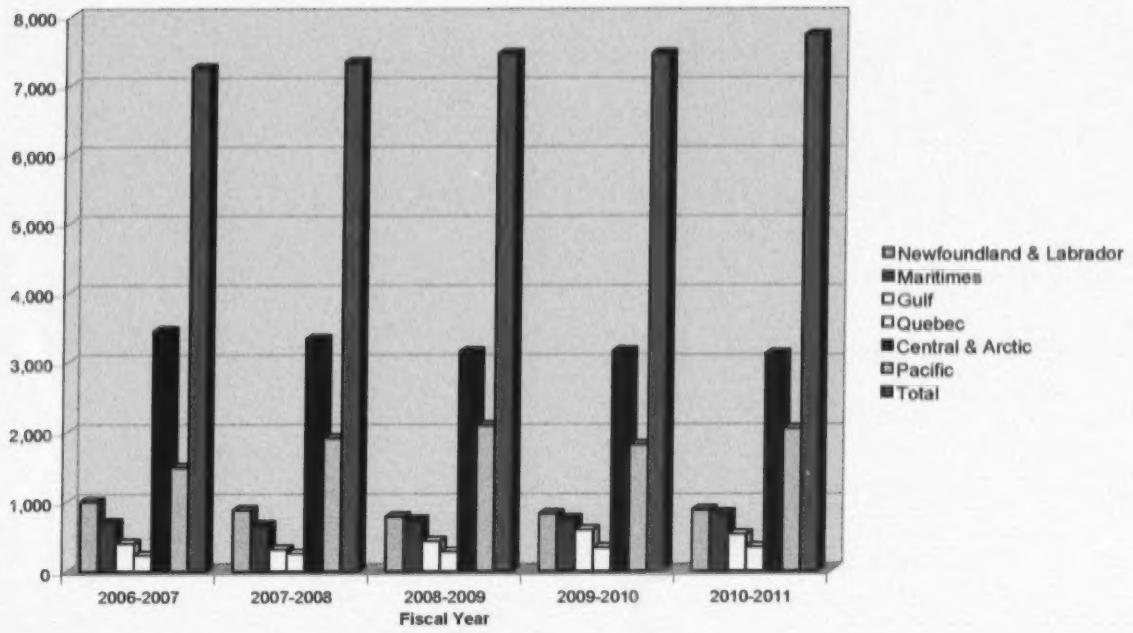
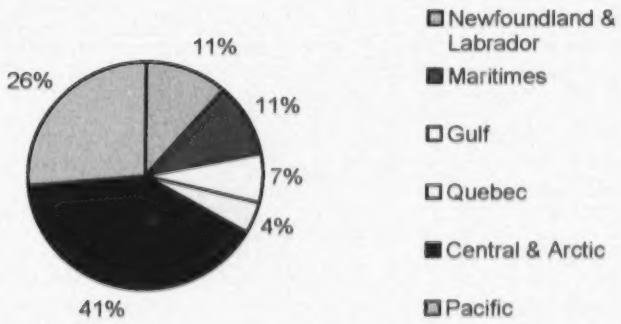


Figure 2: Percent of Referrals by Region, 2010-2011



3.2.3 Advice Provided and Authorizations Issued

Data recorded in PATH on advice provided and authorizations issued by DFO region are presented below in Table 3.

Table 3:
Advice Provided and Authorizations Issued
Fiscal Year 2010-2011

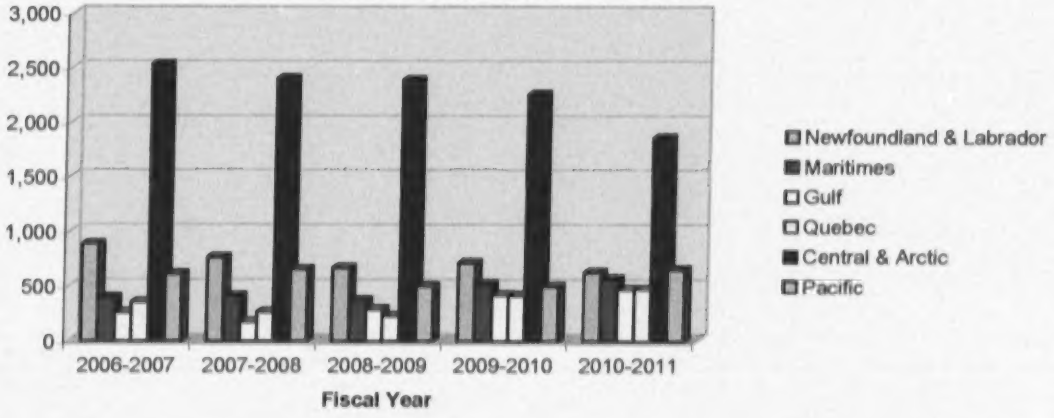
REGION	Advice Provided to Proponent or Others[10]	Advice provided in form of Operational Statement	Authorizations Issued	TOTAL
Newfoundland and Labrador	617	9	4	626
Maritimes	566	0	57	566
Gulf[11]	468	0	28	468
Quebec	451	21	44	472
Central and Arctic	1,675	183	145	1,858
Pacific	628	22	91	650
TOTAL	**4,405**	**235**	**369**	**4,640**

Figure 3 illustrates the regional distribution of advice. Figure 4 illustrates the number of authorizations by region in 2010-2011.

[10] Advice provided to others includes: written advice to federal agencies, provincial/territorial/other agencies, letters of advice to proponents, letters of approval to proponents, mitigation measures provided to permitting agencies.

[11] In the Gulf Region, as a result of an agreement with the Province of New Brunswick, DFO does not need to provide Operational Statements for streamlining certain activities.

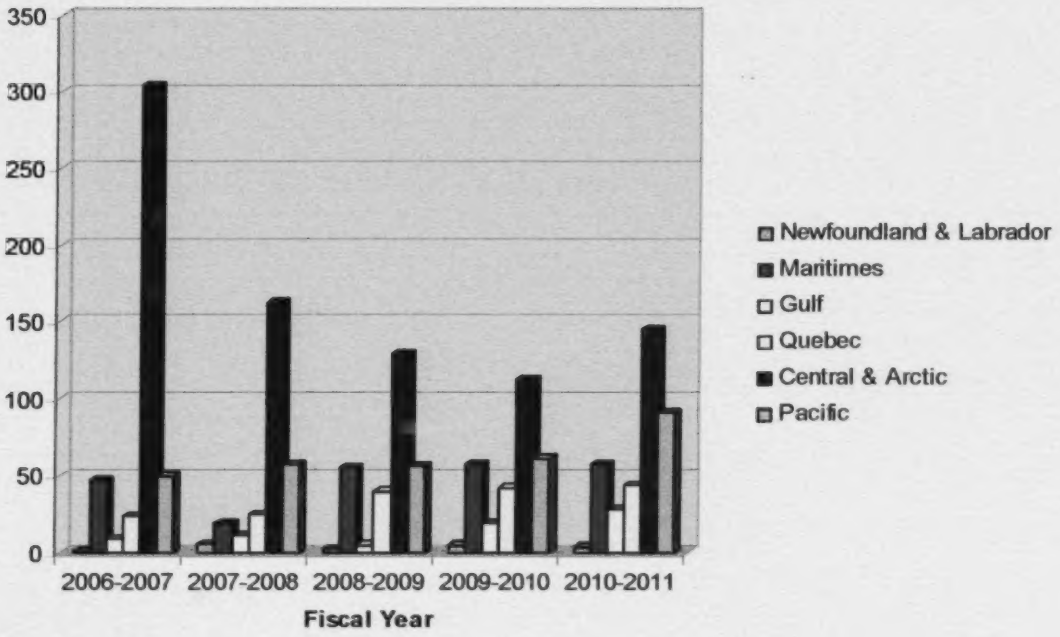
Figure 3: Advice Provided by Region, 2006-2007 to 2010-2011



[12]

[12] As of 2005-2006, the advice provided includes Operational Statements provided as Advice (following receipt of referral).

Figure 4: Authorizations Issued by Region, 2006-2007 to 2010-2011 [13]



3.2.4 Notifications and Use of Regulatory Streamlining Tools

DFO uses operational statements as a management tool to improve efficiency and effectiveness of its regulatory reviews for low-risk activities. Operational statements have been developed for certain types of works or undertakings. They provide generic guidance and specify mitigation measures needed to avoid harm to fish habitat. Proponents incorporating measures outlined in an Operational Statement will comply with the Act and are not required to submit an application for an Authorization under subsection 35(2) of the *Fisheries Act*.

In addition, DFO has established the "class" authorizations process for agricultural municipal drains in Southern Ontario (Ontario-Great Lakes Area). The issuance of class authorizations for pre-defined drain maintenance activities eliminates the requirement for a site-specific review process. Similarly, an integrated regulatory regime for placer mining in the Yukon Territory provides a streamlined process for environmental review of placer mining proposals pursuant to the *Yukon Environmental and Socio-economic Assessment Act*.[14]

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[13] Notifications of use of Class Authorizations are not included in this chart.

[14] For more information on placer authorizations refer to: http://www.yukonplacersecretariat.ca/infocentre.html >.

Table 4 provides a summary notifications of use of Class Authorizations and Operational Statements in Fiscal year 2010-2011.

Table 4:
Notifications of use of Class Authorizations and Operational Statements
Fiscal Year 2010-2011

REGION	Class Authorizations Notifications	Operational Statements Notifications	TOTAL
Newfoundland and Labrador	0	37	37
Maritimes	0	2	2
Gulf	0	0	0
Quebec	0	33	33
Central and Arctic	310	3,485	3,485
Pacific	14	367	367
TOTAL	**324**	**3,924**	**4,248**

3.3 Compliance and Enforcement of the Fish Habitat Protection Provisions of the Fisheries Act

DFO's C&P Program is responsible for monitoring compliance with legislation and regulations regarding the conservation of fisheries resources and fish habitat. The Minister of Fisheries and Oceans appoints Fishery Officers to enforce fisheries regulations and management plans as well as the habitat provisions of the *Fisheries Act*.

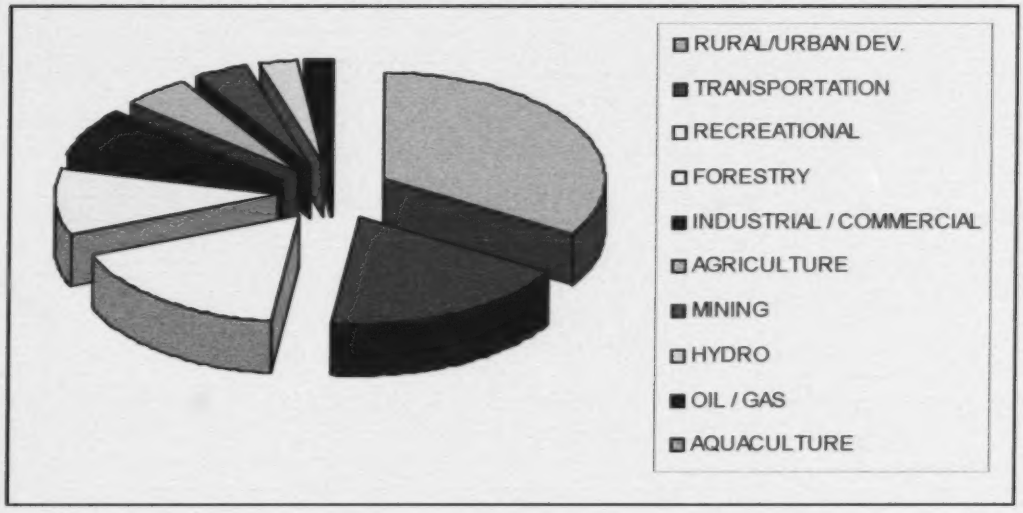
In addition to protecting fish habitat, Fishery Officers conduct at-sea patrols in coastal and inshore areas, monitor catches, conduct forensic investigations and audits, conduct inland patrols and provide information to fishers regarding government policies and regulations. The enforcement and compliance monitoring activities of Fishery Officers are key to protecting Canada's fish and fish habitat.

The C&P Directorate has adopted a three-pillar approach to the delivery of its enforcement program to address existing challenges and to integrate intradepartmental compliance issues in a comprehensive compliance program. This approach, as described under the DFO National Compliance Framework, guides the application of compliance tools organized into three pillars of compliance management. Pillar One activities include under the heading "*Education and shared stewardship*": informal and formal education programs and co-management / partnership agreements. Pillar Two, titled "*Monitoring, control and surveillance*", include activities such as land, sea and air patrols; inspections and compliance monitoring of third-party service providers; and enforcement response to non-compliance. Pillar Three, titled "*Major case / special*

investigations" include formal intelligence gathering and analysis, forensic audits and prosecutions.

For fiscal year 2010-2011, Fishery Officers dedicated a total of 39,255 hours to habitat compliance and enforcement activities. The percentage of Fishery Officer time allocated to habitat compliance management, as reported under the three-pillars of activities was 14%, 32% and 54%, respectively. Further analysis indicates there are five major habitat activities which accounted for this time. These habitat activities are in descending order: rural and urban development, transportation, recreational, forestry and industrial. The effort and time spent on habitat compliance management, identified as a single work element, represents 6% of the total amount of time Fishery Officers dedicated to other work elements.

Figure 5: Allocation of compliance effort by habitat-related activity



For more information on habitat compliance and enforcement activities, see the *Compliance and Enforcement Policy for the Habitat Protection and Pollution Prevention Provisions of the Fisheries Act*[15].

Table 5, Table 6 and Table 7 summarize C&P's compliance and enforcement activities by region in 2010-2011.

[15] The full text of the Compliance and Enforcement Policy for the Habitat Protection and Pollution Prevention Provisions of the Fisheries Act may be found at:
< http://www.ec.gc.ca/alef-ewe/default.asp?lang=En&n=D6B74D58-1 >

Table 5: Summary of DFO Habitat Enforcement Activities Fiscal Year 2010-2011			
REGION	**Warnings Issued**	**Charges Laid**	**Alternatives to Prosecution***
Newfoundland and Labrador	3	0	0
Maritimes	10	0	0
Gulf	4	0	0
Quebec	4	0	0
Central and Arctic	18	3	0
Pacific	36	1	5
TOTAL	**75**	**4**	**5**

* Alternatives to prosecution include out-of-court settlements aimed at restoring unauthorized HADD in a timely manner.

Table 6: Convictions Reported under the Habitat Protection Provisions of the *Fisheries Act* Fiscal Year 2010-2011				
REGION	**Section 35(1)**	**Section 36(3)**	**Section 40(3)**	**TOTAL**
Newfoundland and Labrador	0	0	0	0
Maritimes	3	0	0	3
Gulf	1	0	0	1
Quebec	0	0	0	0
Central and Arctic	3	1	0	4
Pacific	2	0	0	2
TOTAL	**9**	**1**	**0**	**10**

Table 7:
Summary of Convictions and Alternative Measures to Prosecution
Fiscal Year 2010-2011

REGION	PROVINCE	AREA	WATERBODY	*FISHERIES ACT* SECTION	PROJECT DESCRIPTION	CONVICTION / RESOLUTION DATE	FINE	SENTENCE DETAILS
Central & Arctic	Ontario	Tiny	Picotte's Creek	35(1)	Sediment deposited resulted in infilling approximately 110 metres of the Picotte's Creek.	October 28, 2010	$16,500	The Court ordered the defendant to pay $14,100 to a local stewardship group for habitat restoration and fish habitat enhancement projects. The defendant was fined $900 payable to the Court and an additional $1500 fine for one count of obstruction.
Central & Arctic	Manitoba	Reynolds	Boggy Creek	35(1), 36(3), 38(6)	A tributary of Boggy Creek was blocked with a dam of clay.	November 30, 2010	$10,000	The defendant was ordered to pay the Court a $500 fine. The remaining fine of $9,500 was paid to Environment Canada's Environmental Damages Fund.
Gulf	New Brunswick	Kedgewick	Whites Brook	35(1)	Deposit of waste and debris in a hole in the ground near Whites Brook.	January 27, 2011	$3,000	The defendant was ordered to decontaminate the site at the owner's expense.
Maritimes	New Brunswick	Wickham	Washademoak Lake	35(1)	Contractor built a retaining wall and a boat launch on Washademoak Lake.	June 16, 2010	$4,000	The Court ordered the defendant to pay $3600 to the Canaan-Washademoak Watershed Association and $400 to the Court.

Table 7:
Summary of Convictions and Alternative Measures to Prosecution
Fiscal Year 2010-2011

REGION	PROVINCE	AREA	WATERBODY	*FISHERIES ACT* SECTION	PROJECT DESCRIPTION	CONVICTION / RESOLUTION DATE	FINE	SENTENCE DETAILS
Maritimes	New Brunswick	St. George	Red Rock Stream	35(1)	Pipeline installation and infilling in the Red Rock Stream.	January 14, 2011	$28,800	The defendant was order to pay a $28,000 fine to the Environmental Impacts Fund.
Maritimes	New Brunswick	Newcastle Creek	Newcastle Creek River	35(1)	Pipeline installation on the bank of the Newcastle Creek River.	February 21, 2011	$70,000	The Court ordered the defendant to pay $65,000 to the Court, which was transferred to the Canaan-Washademoak Lake Watershed Association for remediation work.
Pacific	British Columbia	Nelson Island	Cockburn Bay	35(1)	Work competed in and about a stream without authority.	August 16, 2010	$12,500	The defendant received a $1,000 fine and ordered to pay $11,500 to habitat enforcement projects on the Sunshine Coast.
Pacific	British Columbia	Chilliwack	Elk Creek	35(1)	Land clearing and vegetation removal along Elk Creek.	December 3, 2010	$20,000	The defendant received a $20,000 fine.

Table 7:
Summary of Convictions and Alternative Measures to Prosecution
Fiscal Year 2010-2011

REGION	PROVINCE	AREA	WATERBODY	*FISHERIES ACT* SECTION	PROJECT DESCRIPTION	CONVICTION / RESOLUTION DATE	FINE	SENTENCE DETAILS
Pacific	Northwest Territories	Yellowknife	Snare River	36(3)	The dyke breached causing reservoir waters to discharge downstream to Strutt Lake creating a new channel and resulted in large amounts of sediment materials being deposited into Strutt Lake, and the downstream Snare River over a distance of 22 kilometres.	January 19, 2011	$450,000	The court ordered the Northwest Territories Power Corporation a total penalty of $450,000. The corporation received a $25,000 fine; and ordered the remaining to $425,000 to general revenue for a habitat compensation fund in the Territories, to be administered by the Department.

The following are examples of results achieved through settlements in habitat protection enforcement actions.

$70,000 Dollars in Fines and Penalties for New Brunswick Habitat Destruction

A New Brunswick Provincial Court Judge accepted the joint sentence recommendation for a $5,000 fine for the charge under Section 35 (1) of the Fisheries Act and a further $65,000 penalty for remediation works to be paid to the New Brunswick Court and then transferred to the Canaan - Washademoak Lake Watershed Commission.

The charge stemmed from an incident that took place from 2008 to 2009 when the NB Coal Ltd. was moving its large drag line from one coal seam to another and in the move crossed four watercourses. The company had applied for and received the appropriate authorizations from the Department, but one significant rain event blew out their temporary causeway on Newcastle Creek, near Minto, New Brunswick. The company went outside of the work area, defined within the authorization, and created an approximately 1680 square metre "island" in the Newcastle Creek to put equipment on to remove the materials deposited during the rain event.

Illegal Alteration of Fish Habitat Results in $375,000 Fine for British Columbia Development Corporation

A British Columbia development corporation plead guilty to illegal alteration of fish habitat and received a fine of $375,000 for reparation costs in the Shuswap Lake area. The Judge fined the Corporation $5,000 and levied the additional sums of $70,000 to be paid to the Fraser Basin Council to support conservation and protection of fish and fish habitat in the Shuswap Lake area; and $300,000 to be held in trust to pay for habitat remediation of the damaged site. This work will be undertaken by the Corporation, overseen by Department of Fisheries and Oceans habitat biologists, and will include the replanting, irrigation, and fencing off of sensitive habitat from the upland development, as well as ongoing monitoring.

The case began in June 2007, when the Department launched an investigation around land clearing done between January and June 2007 on development property known as "Old Town Bay" near Sicamous, British Columbia. In early 2009, after a lengthy and extensive investigation, the Corporation was charged with clearing forest and vegetation from seven hectares of a relatively rare landform in the Eagle River delta area on Shuswap Lake. This investigation was coordinated by Conservation and Protection with expert advice provided by program staff as well as external partner agencies including the Department of Justice and the Provincial Ministry of the Environment.

The Eagle River and Shuswap Lake are habitat for Sockeye, Chinook, Coho and Pink Salmon, Rainbow Trout, Steelhead, Lake Char and a variety of other fish, and support commercial, recreational and First Nations fisheries. Most of the area of the delta that was logged was within foreshore areas under permanent protection from property development by both federal and provincial legislation.

Northwest Territories Power Corporation Fined $450,000 for Share Forks Spill
On January 19, 2011, a Judge of the Northwest Territories imposed a fine of $450,000 against the Northwest Territories Power Corporation for a violation of section 36(3) of the *Fisheries Act*.

Fisheries and Oceans Canada pursued a charge following a breach of a dyke that occurred at the corporation's Snare Forks Hydro Facility in the Northwest Territories in June 2006. Suspended sediments considered to be harmful to fish entered the Snare River system and Strutt Lake in contravention of the *Fisheries Act*.

Of the fine imposed by the court, a penalty of $25,000 will be paid to the Crown and $425,000 will be put into a fund for future habitat compensation projects in the Northwest Territories. The Snare River system is an important habitat for species such as Whitefish, Arctic Grayling, Lake Trout and Northern Pike.

3.4 Oceans and Scientific Support

DFO's Ecosystems and Oceans Science Sector conducts research and provides scientific advice to assist habitat management practitioners. In collaboration with managers in the Ecosystems Management Directorate, environmental scientists identify knowledge gaps related to habitat management, conservation, restoration and improvement, and devise research projects to address those gaps. Some of the research and scientific advice provided in fiscal 2010-2011 included:

- Science review of Athabasca River In-stream Flow Needs
- Review of the Sydney Tar Ponds Marine Environmental Effects Monitoring Program
- Reviews of several Offshore Oil and Gas Environmental Effects Monitoring Reports
- Primary literature published on fish habitat of several species (including Killer Whale, St. Lawrence Beluga, Atlantic Salmon, Wolf Fish and Dolly Varden)
- Production of several predictive models for benthic habitats for areas including British Columbia and the Estuary and Gulf of St. Lawrence
- Reviews Environmental Remediation Project Monitoring Reports (including the Sydney Tar Ponds).
- Examination of Potential Impacts of proposed finfish aquaculture sites.

Research results are transferred to HMP staff in the form of peer-reviewed scientific advice, scientific workshops, published reports, fa ct sheets, briefings, and personal consultations. Information provided can range from informal, one-on-one discussions, to regional peer-reviewed advice sessions and large-scale National Advisory Process workshops that follow a formal process to produce peer-reviewed, published advisory documents. The Canadian Science Advisory Secretariat (CSAS) within the Ecosystems and Oceans Science Sectors oversee the provision of scientific advice, and maintains a website where reports are made available to the Canadian public[16].

[16] < http://www.dfo-mpo.gc.ca/csas/Csas/Home-Accueil_e.htm >

4.0 Administration and Enforcement of the Pollution Prevention Provisions of the *Fisheries Act*

Since 1978, Environment Canada (EC) has assumed the lead responsibility for the administration of the pollution prevention provisions of the *Fisheries Act* - namely subsection 36(3) and related provisions of the *Fisheries Act*. Subsection 36(3) deals with the deposit of deleterious substances into waters frequented by fish or places where the substances may enter such waters.

EC administers the pollution prevention provisions through a suite of activities including compliance promotion, regulations, environmental effects monitoring, water quality monitoring, enforcement, emergencies management and administrative agreements. The department's 2010-11 activities may be summarized as follows:

- General ongoing reviews and improvements to the administration and enforcement of the pollution prevention provisions;
- Compliance promotion activities to support subsection 36(3) which prohibits the deposit of deleterious substances to waters frequented by fish unless authorized by regulation;
- Development, administration and compliance promotion for regulations under subsection 36(4) for the pulp and paper sector and for metal mines, including the environmental effects monitoring (EEM) elements of those regulations;
- Water quality monitoring under the Canadian Shellfish Sanitation Program;
- Enforcement of the general prohibition under subsection 36(3);
- Response and notification activities for emergencies as per subsection 38(4) to 38(6) regarding the deposit of deleterious substances out of the normal course of events;
- Administrative and notification agreements with provinces which support effective administration of the Pollution Prevention Provisions and associated regulations.

4.1 General Reviews and Improvements

In May 2009, the Commissioner for Environment and Sustainable Development (CESD) tabled in Parliament a review of the federal government's activities under the *Fisheries Act* to protect fish habitat, including Environment Canada's administration and enforcement of the pollution prevention provisions. The CESD report included a number of important recommendations for ways in which Environment Canada could make improvements. These included the need to set out clearer objectives, results expectations and accountabilities, to improve the department's risk-based approach to assess and address the risks of non-compliance with the *Fisheries Act* Pollution Prevention Provisions (PPP), to review older regulations and guidelines, to improve enforcement quality assurance and to work with the Department of Fisheries and Oceans to more clearly establish expectations with respect to administration of the pollution prevention provisions.

Environment Canada has made progress over the past year with respect to the commitments it made in response to these CESD recommendations. The department has completed a number of elements of its Results-Based Management and Accountability Framework, is exploring ways to improve its risk-based approach and is nearing completion in its review of a number of older regulations and guidelines. Dedicated resources remain in place for enforcement quality assurance. Environment Canada and the Department of Fisheries and Oceans have an active dialogue underway on their respective roles and responsibilities and remain committed to renewing the Memorandum of Understanding between the two departments.

4.2 Compliance Promotion for General Prohibition of Releases of Deleterious Substances to Waters Frequented by Fish

Compliance promotion relates to the planned activities that are undertaken to increase the awareness and the understanding of the Act and related risk management instruments. Through these activities, information is provided on what is required to comply, the benefits of complying with the law as well as the consequences of non-compliance.

The approach to compliance promotion is collaborative and coordinated across the department's programs and regions and with Enforcement. It is achieved using various tools and approaches such as website postings, letters and emails, brochures, site visits, responses to inquiries and information sessions.

In 2010-2011, EC undertook compliance promotion activities relating to the general pollution prevention provisions, identified in sub-sections 36(3) and 38(4) of the *Fisheries Act,* across the country for a number of sectors and sources. EC undertakes compliance promotion primarily through the environmental assessment process, in collaboration with Enforcement activities and in response to inquiries.

- EC undertook reviews of environmental assessment proposals for approximately 100 large scale projects, along with many smaller-scale projects. Reviews were used to identify issues related to *Fisheries Act* PPP and related Regulations, helping to incorporate proactive planning to ensure regulatory compliance into the development of the projects. These reviews included diamond, coal, potash and metal mining developments and oil and gas developments.

- EC provided scientific and technical advice related to contaminated sites (federal and non-federal sites) and potential *Fisheries Act* PPP implications through various avenues including the Federal Contaminated Sites Action Plan (FCSAP), environmental assessments and provision of direct involvement during the assessment and remediation stages of contaminated site clean up.

- EC responded to inquiries and provided information on a broad range of activities (e.g. mine water treatment/acid drainage from old coal mines; power plants; dredging of port facilities; fish and food processing plants; marine maintenance operations such as

cleaning ship hulls; exploration programs at abandoned gold mines and potential mining sites; use of treated wood in marine environment; demolition of marine infrastructure; limestone storage).

4.3 Regulations

4.3.1 Pulp and Paper

EC's analysis of the effluent data generated during 2009[17] by Canadian pulp and paper mills and off-site treatment facilities concluded that these facilities continued to have high rates of compliance with the effluent quality limits prescribed in the *Pulp and Paper Effluent Regulations* (PPER). Across the country in 2009, the Regulations applied to 99 pulp and paper mills and 1 off-site treatment facility that deposit effluent directly into the environment. Compliance rates are unchanged from the previous year (i.e. over 99% for total suspended solids and biochemical oxygen demand and 97% for the requirement that effluent be non-acutely lethal to rainbow trout.)

The Government published *Regulations Amending the Pulp and Paper Effluent Regulations (Miscellaneous Program)* in the *Canada Gazette*, Part II on 25 March 2011. The amendments were administrative in nature and were intended to improve the clarity of the regulatory text by identifying a single Authorization Officer for each province (in Schedule V), and to improve the consistency in wording between the English and French versions (in Schedule IV.1). Further amendments to the PPER were made by the *Regulations Amending Certain Regulations Made Under the Fisheries Act* that were published in the *Canada Gazette*, Part II on 13 April 2011. The requirements for verbal notification in the event of a discharge out of the normal course of events (DONCE) were removed from the PPER. These requirements can now be found in the new *Deposit Out of the Normal Course of Events Notification Regulations*, also published in Part II of the *Canada Gazette* on April 13, 2011.

EC continued to provide guidance and advice to the pulp and paper sector on the Environmental Effects Monitoring (EEM) requirements under the PPER. The technical guidance document on EEM was updated in 2010 to ensure that it is adequate, up to date, clear and reflect the recommendations from the Smart Regulations Initiative[18]. Meetings with pulp and paper stakeholders were held to explain the updated guidance.

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[17] Reporting data for the PPER are submitted through one of four electronic and/or paper based systems across Canada, depending upon which province a given mill is located. 2009 is the most recent year for which data have been pooled, tabulated and analysed at an aggregate level.

[18] Improving the Effectiveness and Efficiency of Pulp and Paper Environmental Effects Monitoring: A Smart Regulation Opportunity. (Environment Canada, December 2005).

EC continued to provide compliance promotion advice to the pulp and paper sector on the requirements of the PPER especially at sites with temporary or proposed closures. EC highlighted requirements for continued compliance with the PPER, and with the general provisions of subsection 36(3) of the *Fisheries Act*.

Compliance promotion activities included continued support for the electronic reporting of data by regulated facilities and training on the utilization of the Regulatory Information Submission System (RISS) for pulp and paper mills. The information system is a web based reporting tool used by industry to report mandatory data as required under the PPER.

4.3.2 Metal Mines

EC's analysis of the effluent data generated during 2009 by Canadian metal mines concluded that these companies continued to have high rates of compliance with the effluent quality limits prescribed in the *Metal Mining Effluent Regulations* (MMER). The Regulations applied to 104 mining facilities across the country in 2009, and the compliance rate with limits for arsenic, cyanide, lead and radium 226 was 100%, over 99% for copper, nickel, zinc and pH, and 94% for total suspended solids. The Regulations also require that effluent be non-acutely lethal to rainbow trout, and in 2009 the compliance rate for this requirement was 96.2%.

EC continues to provide guidance and advice to the metal mining sector on the EEM program required under the MMER. A national assessment of the EEM data from the second phase of monitoring was initiated in 2009-10 and work continued in 2010-11. EC continues to review its technical guidance document on EEM to ensure that it is adequate, up to date, clear and relevant and reflects departmental actions taken in response to recommendations from the Metal Mining Environmental Effects Monitoring Review Team[19]. Some chapters of the technical guidance were completed and made available.

The MMER were amended once in 2009. These amendments added portions of three water bodies to Schedule 2 of the Regulations. These water bodies are associated with a mine developments in British Columbia.

Compliance promotion activities in this sector included the provision of information and advice to the regulated community on the requirements of the MMER and the *Fisheries Act*, as well as in response to the Environmental Assessment (EA) project review process. Approximately 40 compliance promotion site visits were made to mines subject to the MMER and prospective mines, as well as to several operating facilities expected to become subject to the MMER in the future, including proposed mines undergoing environmental assessments. Several meetings were held throughout Canada with industry, provincial and municipal government representatives on

[19]Metal Mining Environmental Effects Monitoring Review Team Report, (Environment Canada, 2007).

the application of the *Fisheries Act* PPP and the MMER to Canadian mines and requirements to comply.

4.3.3 Notification

The *Deposit Out of the Normal Course of Events Notification Regulations* came into force on March 25, 2011. These Regulations apply to verbal notification requirements under the *Fisheries Act*. They give the regulated community and the public the name and telephone number of the person providing 24-hour emergency telephone service for the organization operating for the province or territory to which notifications are to be made, enabling that person to receive notifications on behalf of Environment Canada.

4.3.4 Wastewater

The Government published the proposed *Wastewater System Effluent Regulations* (WSER) in the *Canada Gazette*, Part I on March 20, 2010. These proposed Regulations are Environment Canada's main tool to implement the Canadian Council of Ministers of the Environment (CCME) *Canada-wide Strategy for the Management of Municipal Wastewater Effluent* which was endorsed by the CCME on February 2009. The proposed WSER include risk-based implementation timelines and baseline effluent quality standards for secondary wastewater treatment. The proposed Regulations would be applicable to municipal, federal and community wastewater systems across the country, except those located in the far north.

In line with the CCME Strategy, the WSER would be applied in a harmonized regulatory framework with the provinces and territories. The intended outcome is to ensure that the release of wastewater effluent does not pose unacceptable risks to human and ecosystem health or fisheries resources through the application of one set of standards in a fair, consistent, and predictable manner.

Environment Canada continued to work with provinces, municipalities and others following the publication in the *Canada Gazette*, Part I to refine the WSER with the intention to publish the final WSER in *Canada Gazette*, Part II early in 2012.

While formal compliance promotion activities will not take place until the final regulation is published, a significant amount of outreach occurred in 2010-11 to help regulatees prepare to comply with the final regulation. Presentations were made to stakeholders on the CCME Canada Wide Strategy and the development of Regulations that would support the implementation of the CCME strategy. EC contacted over 100 municipalities, meeting with and providing follow-up information to over 30 of them. The follow up meetings provided an additional opportunity for discussion of the proposed regulatory requirements, an opportunity for those municipalities to make additional comments on the development of the regulations and an opportunity for

Environment Canada to provide information on their current obligations under sub-sections 36(3) and 38(4) of the *Fisheries Act*.

4.3.5 Other Regulations and Guidelines

Environment Canada continued its review of a number of older *Fisheries Act* PPP Regulations and Guidelines to ensure that they are up to date, relevant and enforceable. These include the *Petroleum Refinery Liquid Effluent Regulations* and Guidelines, *Chlor-Alkali Mercury Liquid Effluent Regulations*, *Meat and Poultry Products Plant Liquid Effluent Regulations*, *Potato Processing Plant Liquid Effluent Regulations*, Fish Processing Operations Liquid Effluent Guidelines and Metal Finishing Liquid Effluent Guidelines.

4.4 Water Quality Monitoring – Canadian Shellfish Sanitation Program

Under the Canadian Shellfish Sanitation Program (CSSP), EC surveys bivalve molluscan shellfish growing areas for the purposes of harvesting area classification. EC makes classification recommendations to Fisheries and Oceans Canada (DFO) and the Canadian Food Inspection Agency (CFIA) pursuant to its responsibilities under the CSSP MOU. DFO considers this information and will implement closures for those areas as appropriate under the *Management of Contaminated Fisheries Regulations*, which DFO administers. In 2010-2011, over 30,300 marine water quality samples were collected to support the classification of approximately 15,426 square kilometres of shellfish harvest area along the coastlines of the Atlantic, Quebec (St. Lawrence Estuary) and Pacific regions of Canada. This was a decrease from the 19,416 square kilometers reported in 2009 due to improvements in area measurement using GIS technology in Quebec.

In 2010, there were 4,042 recorded spills to shellfish areas from wastewater treatment plants (WWTPs). This was an increase from 3,678 spills recorded in 2009. CSSP partners (CFIA, DFO, EC) worked together to raise awareness of WWTP operators about the importance of timely reporting pursuant to s. 38(4) of the *Fisheries Act*. EC assessed the adverse effects of such spills on harvest areas and made appropriate closure recommendations to DFO. The CSSP continues the process of redefining the classification of harvest areas near WWTPs, including EC's assessment of over 300 WWTPs that could potentially impact these areas.

4.5 Enforcement Activities and Measures

4.5.1 Summary of Enforcement Activities

Table 8 summarizes the number of occurrences, inspections and investigations carried out under the *Fisheries Act* PPP by EC in 2010-2011.The following explanations should be noted with respect to the table:

- An **occurrence** is any event where there is a possible violation of the environmental and wildlife legislation administered, in whole or in part, by EC. An occurrence can generate an inspection or an investigation. Occurrences are tabulated based on Reported Date, for all categories except Spill/Release. An occurrence file may include one or more regulations, therefore is it possible that the data at the regulation level, may not add to the total at the legislation level.
- An **inspection** is an activity that involves verification of compliance with the environmental or wildlife legislation administered, in whole or in part, by EC. Only closed files using the end date are tabulated. The number of inspections relates to the number of regulatees inspected for compliance under each of the applicable regulations.
- An **investigation** is the gathering and analyzing, from a variety of sources, of evidence and information relevant to a suspected violation where there are reasonable grounds to believe that an offence has been, is being or is about to be committed with regards to the environmental or wildlife legislation administered, in whole or in part, by EC. Investigations are tabulated by number of investigations files, based on Start Date of the investigation. An investigation file may include activities relating also to another piece of legislation and may include one or more regulations. Therefore, the total number of investigations shown by regulation may not add to the total at the legislation level.

Table 8:
EC Enforcement Activities and Measures Carried Out under the *Fisheries Act*
Fiscal Year 2010-2011

NATIONAL	Inspections[20]			Investigations[21]	Enforcement Measures				
	Off-site	On-site	Total		Prosecutions	Charges	Convictions	Written Directives	Written Warnings
General Prohibition	825	1042	**1,867**	41	2	3	0	47	39
Chlor-Alkali Mercury Liquid Effluent Regulations and Guidelines	-	-	-	0	0	0	0	0	0
Meat and Poultry Products Plant Liquid Effluent Regulations and Guidelines	12	-	**12**	0	0	0	0	0	0
Petroleum Refinery Liquid Effluent Regulations and Guidelines	49	1	**50**	0	0	0	0	0	0
Potato Processing Plant Liquid Effluent Regulations and Guidelines	21	3	**24**	0	0	0	0	0	0
Pulp and Paper Effluent Regulations	1060	75	**1,135**	3	0	0	0	1	27
Guidelines for Effluent Quality and Wastewater Treatment at Federal Establishments	-	1	**1**	0	0	0	0	0	0
Metal Mining Effluent Regulations	486	86	**572**	1	0	0	0	2	22
Fish Processing Operations Liquid Effluent Guidelines	2	30	**32**	0	0	0	0	0	0
TOTAL	**2,455**	**1,238**	**3,693**	**45**	**2**	**3**	**0**	**50**	**88**

[20] **Number of Inspections:** Only closed files using the end date are tabulated. The number of inspections relates to the number of regulatees inspected for compliance under each of the applicable regulations.

[21] **Number of Investigations:** Investigations are tabulated by number of investigations files, based on the Start Date of the investigation. An investigation file may include activities relating to other legislation and may concern one or more regulations. Therefore, the total number of investigations shown by regulation may not add to the total at the legislation level.

ADDITIONAL STATISTICS

There were 14 referrals to other federal or provincial government departments or municipal bodies. Table 9 presents the breakdown of investigation in 2010-2011.

Table 9:
Investigation Breakdown
Fiscal Year 2010-2011

INVESTIGATION BREAKDOWN	# of Investigations
Investigations started and ended in fiscal year 2010-2011	9
Investigations started in fiscal year 2010-2011 and still ongoing at end of fiscal year 2010-2011	28
Investigations started before 2009-2010 and ended in fiscal year 2010-2011	48
Investigations started before fiscal year 2010-2011 and still ongoing at the end of fiscal year 2010-2011	18

EXPLANATORY NOTES: THE STATISTICS ARE TABULATED AS FOLLOWS

The measures are tabulated at the regulation level of a regulation. For example, if the outcome of an inspection is the issuance of a written warning which related to 3 sections of a given regulation, the number of written warnings is 1. This is the reason why we observe smaller numbers during 2010-11 than the previous fiscal years.

Prosecutions: The number of prosecutions is represented by the number of regulatees that were prosecuted by charged date regardless of the number of regulations involved.

Charges: The number of charges is tabulated at the section level of the regulation by charge date, by regulatee. For example, a regulatee violating sections 36(1) and 36(3) of the *Fisheries Act* may be charged with one count under section 36(1) and two counts under section 36(3). This is considered as two charges – one for each section. Charges are counted in relation to the date the charge was laid, not the date when the case began or ended.

Counts: The number of counts is tabulated at the section level of the regulation, by offence date relating to the regulatee's charge.

Convictions: The number of convictions is represented by the number of counts where the regulatee was found guilty or pleaded guilty. For example, in a case where a regulatee is found guilty of one count under section 36(1) and two counts under section 36(3), this is considered three convictions.

4.5.2 Enforcement Highlights

Newfoundland
On June 30, 2010, Corner Brook Pulp and Paper, after pleading guilty to an offence under the federal *Fisheries Act* earlier that month, was ordered to pay a total penalty of $50,000. An investigation by Environment Canada resulted in the company being charged for releasing a substance that is deleterious to fish, into fish-bearing waters. The penalty included a court ordered payment of $45,000 to the Environmental Damages Fund.

Saskatchewan
On August 4, 2010, the City of Moose Jaw pleaded guilty to one offence under the *Fisheries Act* for depositing a deleterious substance into fish-bearing waters and was fined a total of $55,000, which included a $5,000 fine and order to pay $50,000 to the Environmental Damages Fund.

On September 27, 2010, Claude Resources Inc. pleaded guilty in Provincial Court to three charges under the Metal Mining Effluent Regulations of the *Fisheries Act* following an investigation conducted by Environment Canada. The company was assessed penalties totalling $90,000 of which $40,000 was to be paid as a fine, and $50,000 was directed to the Saskatchewan Wildlife Federation to fund environmental projects.

Yukon
On November 16, 2010 North 60° Petro Limited was ordered to pay a $2,000 fine and make a $28,000 contribution to the Environmental Damages Fund after pleading guilty on November 12, 2010 to failing to comply with an Environment Canada Inspector's Direction, which constitutes an offence under the *Fisheries Act*. The Territorial Court also ordered North 60° Petro Limited to prevent the release of deleterious substances (i.e. hydrocarbons) into the Yukon River.

Alberta
On December 22, 2010 Suncor Energy Inc. pleaded guilty to two charges under s. 36(3) of the *Fisheries Act* for the deposit of a deleterious substance into waters frequented by fish and was assessed a penalty of $200,000. The penalty includes a $20,000 fine, with the remaining $180,000 to go the Environmental Damages Fund.

British Columbia
On January 11, 2011, Rivers Inlet Resort in the Queen Charlotte Sound, and its director were convicted of a charge under the *Fisheries Act*. The director was fined $15,000 and Rivers Inlet Resort, $5,000 for depositing a substance deleterious to fish or fish habitat (diesel fuel) into waters frequented by fish.

On March 11, 2011, Canadian National Railway (CNR) Company was convicted of an offence under the *Fisheries Act* for depositing a deleterious substance (diesel fuel) into waters frequented by fish. The company was ordered to pay a total of $75,000 of which $70,000 was to be directed

to projects related to the conservation and protection of fish and fish habitat in the waters of the Fraser River and its tributaries.

Ontario
On March 1, 2011, Ontario Northland Transportation Commission pleaded guilty to one charge of depositing a deleterious substance into fish-bearing waters in contravention of the *Fisheries Act*. The company was fined $60,000 of which $50,000 was directed to the Environmental Damages Fund and $10,000 was imposed as a fine.

4.6 Environmental Emergencies Program

EC's Environmental Emergencies Program (EEP) plays an important role in responses to the deposit of deleterious substances in water frequented by fish. Subsection 38(5) of the *Fisheries Act* states that persons who own or are responsible for a deleterious substance, or persons who cause or contribute to a deposit of the deleterious substance in water frequented by fish, must "take all reasonable measures consistent with safety and with the conservation of fish and fish habitat" to prevent the deposit or, where that deposit actually does occur, "to counteract, mitigate or remedy any adverse effects that result or may reasonably be expected to result". If a spill or other deposit out of the normal course of events occurs and if required, EC provides environmental and technical advice to the responsible parties, environmental response organizations and other levels of government.

In addition, EC's Environmental Emergencies personnel:

- May receive notifications or deposits of deleterious substances into the environment; access and inspect the site of the deposits or any documents in order to observe or to carry out spill response activities;
- Collect relevant information and samples for the purpose of establishing the fate and effects of the pollutant , and determining environmental damage;
- Issue inspector's directions requiring the responsible parties to take preventive or remedial measures if the inspector is satisfied on reasonable grounds that there is an occurrence and that immediate action is necessary;
- Take all reasonable measures or cause them to be taken, if the inspector is satisfied on reasonable grounds that there is an occurrence and that immediate action is necessary; and
- Support enforcement actions.

EC works closely with partners and agencies at the regional level involved in an environmental emergency response. The scope and nature of on-site inspections varies across the country depending on the location of the incident, the responsible parties and arrangements that exist with other jurisdictions. EC's seeks to protect the environment against deposits of deleterious substances in water frequented by fish in a way which minimizes duplication of administrative effort between federal, provincial and territorial governments. To support effective action in

each region, EC coordinates Regional Environmental Emergencies Teams which provide agencies involved in an environmental emergency response with consolidated advice and scientific information on environmental protection, environmental damage assessment, clean-up measures and the disposal of waste resulting from cleanup activities.

In 2010-2011, EC recorded approximately 1,877 occurrences (compared to 1,633 the previous year) involving the deposit of a deleterious substance out of the normal course of events under the *Fisheries Act*. EC's Environmental Emergency Officers, who are designated as inspectors under the *Fisheries Act*, conducted 76 on site inspections to verify that the responsible parties complied with subsection 38(5) of the *Fisheries Act*. In 2010/11, EC also undertook a series of compliance promotion activities aimed at increasing compliance with subsection 38(4) of the *Fisheries Act* requiring notification of 'deposits out of the normal course of events' (DONCE). This included providing information to Federal government agencies, provincial governments, and a wide range of industrial sectors and operators as well as to First Nation communities.

4.7 Agreements with Provinces and Territories

4.7.1 Administrative agreements

Canada-Alberta Administrative Agreement for the Control of Deposits of Deleterious Substances under the Fisheries Act

This agreement entered into force on September 1, 1994. It establishes the terms and conditions for the cooperative administration of subsection 36(3) and the related provisions of the *Fisheries Act* as well as for regulations under the *Fisheries Act* and the *Alberta Environmental Protection and Enhancement Act*. The Agreement streamlines and coordinates the regulatory activities of EC and Alberta Environment (AENV) in relation to the protection of fisheries, and reduces duplication of regulatory requirements for regulatees.

In 2010-2011, Alberta Environment (AENV) reported 1845 incidents to EC, of which 449 were related to the *Fisheries Act*. This collaboration led to 273 (on-site and off-site) inspections and 10 investigations. EC conducted an additional 69 off-site inspections under the *Pulp and Paper Effluent Regulations* and the *Petroleum Refinery Liquid Effluent Regulations* for monthly and annual reports forwarded from AENV in accordance with the Agreement.[22]

In 2010-2011, the *Canada-Alberta Environmental Occurrences Notification Agreement* came into effect and consequently amended the 1994 *Canada-Alberta Administrative Agreement for the Control of Deposits of Deleterious Substances under the Fisheries Act,* with respect to the notification of environmental occurrences.

Canada-Saskatchewan Administrative Agreement for the Control of Deposits of Deleterious Substances under the Fisheries Act

[22] Incidents reported through provincial agreements are included in the summary enforcement data provided in Table 8.

This agreement sets out the principles for cooperation and identifies a preliminary list of activities where detailed collaborative arrangements could be developed. Existing collaborative arrangements are described in the five annexes to the agreement.

In 2010-2011, the Saskatchewan Ministry of Environment reported 704 spills to the EC's Enforcement Branch, of which 88 were possible *Fisheries Act* violations. Twenty-six of these led to inspections. The remaining 66 occurrence referrals did not require an on-site inspection but generated an additional 16 off-site inspections.

In 2010-2011, the *Canada-Saskatchewan Environmental Occurrences Notification Agreement* came into effect and consequently amended the 1994 *Canada-Saskatchewan Administrative Agreement for the Control of Deposits of Deleterious Substances under the Fisheries Act*, with respect to the notification of environmental occurrences.

Canada-Quebec Pulp and Paper and Metal Mining Sectors Administrative Agreement

Administrative agreements concerning the pulp and paper sector have been in place between the province of Quebec and the Government of Canada since 1994. The fourth agreement expired on March 31, 2007. On June 13, 2009, the proposed *Canada-Quebec Pulp and Paper and Metal Mining Sectors Administrative Agreement* was published in Part I of the *Canada Gazette*. The Parties have continued to cooperate in keeping with the spirit of the draft Agreement.

The proposed agreement recognizes Quebec as the principal interlocutor for receiving, from the pulp and paper and metal mining sectors in that province, most of the data and information required pursuant to the following four federal regulations:

- *Pulp and Paper Mill Effluent Chlorinated Dioxins and Furans Regulations* made pursuant to the *Canadian Environmental Protection Act* (CEPA) 1999;
- *Pulp and Paper Mill Defoamer and Wood Chip Regulations* made pursuant to CEPA 1999;
- *Pulp and Paper Effluent Regulations* made pursuant to the *Fisheries Act*; and,
- *Metal Mining Effluent Regulations* made pursuant to the *Fisheries Act*.

Under the agreement, the province acts as a "single window" for the gathering of information from Quebec pulp and paper mills and forwards such information to EC for the purpose of enabling the latter to implement CEPA 1999 and the *Fisheries Act*, and their regulations. Both levels of government retain full responsibility for carrying out inspections and investigations and for taking appropriate enforcement measures in order to ensure compliance with their respective requirements on the part of the industry.

During this reporting period more than 570 reports produced by pulp and paper facilities in Quebec were examined against the regulations pursuant to *Fisheries Act*. These administrative inspections and the 21 on-site inspections verified that the facilities were in compliance with the applicable regulations. As well, EC presented compliance verification reports to Quebec. These presentations are made during meetings of the Management Committee established by the

Agreement. In 2010–2011, the Management Committee met twice, on November 15, 2010 and March 30, 2011.

4.7.2 Environmental Occurrences Notification Agreements

Federal, provincial and territorial laws require, in most cases, notification of the same environmental emergency or environmental occurrence, such as an oil or chemical spill. In order to reduce duplication of effort, Environment Canada and Fisheries and Oceans Canada entered into Environmental Occurrences Notification Agreements ("Notification Agreements") with the governments of Alberta, British Columbia, Manitoba, Ontario and Saskatchewan, as well as with the governments of the Northwest Territories and Yukon.

These Notification Agreements came into effect on March 25, 2011, on the day the *Release and Environmental Emergency Notification Regulations* under CEPA, 1999, and the *Deposit Out of the Normal Course of Events Notification Regulations* under the *Fisheries Act*, came into force.

The purpose of the Notification Agreements is to establish a streamlined notification system for persons required to notify federal and provincial/territorial governments of an environmental emergency or environmental occurrence (spill, release, etc.). Under these Notification Agreements, 24-hour authorities operating for the provinces and territories receive notifications of environmental emergencies or environmental occurrences, on behalf of Environment Canada, and transfer this information to Environment Canada.

To view the Notification Agreements, consult:
<http://www.ec.gc.ca/lcpe-cepa/default.asp?lang=En&n=5200AB4B-1 >.